

SECOND AMENDMENT TO LAND DISPOSITION AGREEMENT

(SEE ALSO

Doc. #5473

Reference is hereby made to a certain Land Disposition Agreement between the Boston Redevelopment Authority (the "Authority") and Rose Associates dated September 3, 1981, recorded with Suffolk County Registry of Deeds ("Suffolk Deeds") in Book 9837, Page 28, and filed with Suffolk County Registry District of the Land Court (the "Land Court") as Document No. 358531, as amended by a certain Amended and Restated Land Disposition Agreement among the Authority, Rose Associates and Bostrose Associates, L.P. dated May 3, 1982, recorded with Suffolk Deeds in Book 9948, Page 415, as amended by First Amendment of Land Disposition Agreement dated as of August 15, 1990, recorded with Suffolk Deeds in Book _____, Page _____ (the Land Disposition Agreement, as amended and restated, hereinafter referred to as the "Agreement").

WHEREAS, Section 301(e) of the Agreement contains provisions regarding the use of the second floor area of the building; and

WHEREAS, Section 301(e) was amended by undated Change Order #3, recorded with Suffolk Deeds in Book 11052, Page 117 which Change Order #3 deleted the third sentence of Section 301(e) in its entirety; and

WHEREAS, Section 301(e) of the Agreement was amended by First Amendment dated as of August 15, 1990, recorded with Suffolk Deeds in Book _____, Page _____ which modified Section 301(e) to permit the use of a portion of the second floor of the building for offices uses after such portion had been vacant for seven years; and

WHEREAS, Section 301(e) of the Agreement contains language by which the Authority agreed that if, despite the Redeveloper's best efforts, Redeveloper was unable after a commercially reasonable amount of time to lease the rental space pursuant to the restrictions of Section 301(e), the Authority would consider making such changes in the use restrictions of the Agreement to permit the leasing of all rental spaces on the Property in a commercially reasonable manner; and

WHEREAS, despite Redeveloper's best efforts, the entire second floor of the building remains vacant except for a back corner without windows which is used for storage, and the Redeveloper has requested the Authority to modify the Agreement.

NOW THEREFORE, the Authority and the Redeveloper hereby agree to amend the Agreement, and the Agreement is hereby amended by deleting the first sentence of Section 301(e) of the Agreement concerning the use of the second floor of the Building and substituting therefor: "So much of the second floor area of the building designated as retail/cafe/lounge on the plan attached hereto as Exhibit A shall be designed and used exclusively for retail use or a cafe/lounge, and the Redeveloper shall use reasonable efforts to insure such use," provided however, that the Director of the Boston Redevelopment Authority may, upon application of the owner of said property, adjust or modify such area limited to retail/cafe/lounge use by written decision if he or she is satisfied that such adjustment or modification promotes the planning objectives of the Plan for the building.

Signed as a sealed instrument this _____ day of March, 1990.

BOSTON REDEVELOPMENT AUTHORITY

By: _____,
_____, Director

DEWEY SQUARE TOWER ASSOCIATES

By: Bostrose Associates, L.P.,
General Partner

By: _____
Daniel Rose, General
Partner

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

March __, 1990

Then personally appeared the above-named _____, Director of the Boston Redevelopment Authority as aforesaid and acknowledged the foregoing instrument to be his free act and deed in such capacity and the free act and deed of the Boston Redevelopment Authority, before me.

Notary Public
My commission expires:

133/JAK

MEMORANDUM

MARCH 26, 1992

TO: BOSTON REDEVELOPMENT AUTHORITY AND
THEODORE S. CHANDLER, ACTING DIRECTOR

FROM: PAUL BARRETT, DIRECTOR OF ECONOMIC DEVELOPMENT
BRIAN DELOREY, DEPUTY DIRECTOR, ECONOMIC
DEVELOPMENT

SUBJECT: MINOR AMENDMENT TO ONE FINANCIAL CENTER LDA

EXECUTIVE
SUMMARY:

This memorandum requests that the Board (1) adopt resolutions regarding minor modifications to the South Station Urban Renewal Plan; and (2) authorize the Director to execute documents, including an amendment to the Land Disposition Agreement between the Boston Redevelopment Authority and Dewey Square Tower Associates in order to modify the amount of second floor space in One Financial Center, constructed on South Station Parcel C-5, which must be devoted for restaurant, cafe and retail uses.

INTRODUCTION

The Urban Renewal Plan ("Plan") for the South Station Urban Renewal Area was adopted by the Boston Redevelopment Authority on May 23, 1968, and was approved by the Boston City Council on February 24, 1969.

On August 3, 1981, the Authority approved the Contract Working Drawings and Specifications for a 45-story office tower at Dewey Square on South Station Parcel C-5. The site was conveyed to the redeveloper, Rose Associates, on September 3, 1981. The Contract Working Drawings and Specifications approved by the Authority required the construction of substantial retail areas on the first and second floors of the building and cinemas in the basement, in addition to the office usage. The Plan was amended by the BRA on May 10, 1984 to delete the requirement that the basement of the building contain cinemas. The Plan was again amended on August 15, 1990, to modify the requirement that the entire second floor of the building be used for restaurant and retail uses, by limiting the area in which such uses were required to the area immediately surrounding the atrium of the building.

Dewey Square Tower Associates ("DSTA"), successors to Rose Associates, is requesting that the BRA make minor modifications to the Plan and the Land Disposition Agreement ("LDA") to further modify the amount of the second floor space that must

be used exclusively for retail sales and services. The second floor of the building contains approximately 31,401 square feet of space and has been vacant since its completion in 1984. DSTA has been marketing this space to retail and restaurant operators for more than eight years and has been unable to acquire a tenant for such uses. In 1990, the reduction in the area required to be used for retail was prompted by a proposal from the building's largest tenant, the law firm of Mintz, Levin, Ferris, Cohn, Glovsky & Popeo, P.C., to rent most of the remainder of the second floor of the building, except the area immediately around the atrium, for a conference center and meeting room complex for its law offices. However, Mintz Levin determined not to proceed with that proposal, presumably because of the downturn in the economy and associated legal business, and the entire second floor of the building has remained vacant for an additional year and one half. Metropolitan Life Group Sales, an affiliated company of Metropolitan Life Insurance Company which is a 50% partner in DSTA, now proposes to lease essentially the entire second floor of the building except the area immediately surrounding and within the atrium, which would continue to be reserved for retail/cafe/lounge use.

SOUTH STATION URBAN RENEWAL PLAN

The Plan, as amended, sets forth use restrictions for the second floor of the building as follows:

So much of the second floor area of the building designated as restaurant/lounge on the plan attached hereto as Exhibit A shall be designed and used exclusively for a lounge in the atrium area and an adjoining restaurant, and the redeveloper shall use its best efforts to insure such use.

Section 1201 of Chapter 12 of the Plan entitled "Modifications" provides that the Urban Renewal Plan may be modified at any time by the BRA without further approval, provided that the proposed modification does not substantially or materially alter or change the Plan.

LAND DISPOSITION AGREEMENT

Section 301(c) of the LDA sets forth use requirements identical to those in the Plan for the second floor area, but also provides:

In the event that the best efforts of the Redeveloper to lease the above-described rental spaces do not result in such leasing after a commercially reasonable period of time, the Authority agrees to review the resulting situation and its impact upon the Redeveloper (or its successors and assigns) and upon

the goals of the Plan, and the Authority further agrees to reconsider the methods employed to achieve its objectives, to negotiate in good faith and to make such changes in the use restrictions of the Plan and of this Agreement to permit leasing of all rental spaces on the Property in a commercially reasonable manner.

RECOMMENDATION

The second floor space has remained vacant since the building was completed in 1984. The BRA staff is of the opinion that the Redeveloper made best faith efforts over the past eight years to lease the second floor area of the building. The proponent has been actively seeking a tenant to occupy this space since it was built, but a tenant which would comport with the restrictions set forth in the Plan and LDA has not been found. The BRA staff feels that this was a commercially reasonable period for such a leasing effort. The staff feels that the proposed use by Metropolitan Life is also commercially reasonable. In addition, the fact that Metropolitan Life is prepared to lease this space immediately will facilitate the leasing of the remainder of the second floor as a cafe/lounge in the atrium, in the manner envisioned in the Plan and the LDA.

The BRA staff has reviewed the proposed modifications and is of the opinion that said modification is a minor change and may be adopted within the discretion of the BRA pursuant to Section 1201 of said Plan. The BRA staff therefore recommends minor modification of the Plan and LDA to allow the use of a large portion of the second floor for office space, with a reservation for retail/cafe/lounge use in the atrium area only.

Appropriate votes follow:

VOTED: That the Authority hereby adopts for implementation the resolution re: Minor Modification to the Urban Renewal Plan of the South Station Urban Renewal Area as presented to the BRA on March 26, 1992 and attached hereto, and Authorization to Proclaim by Certificate these Minor Modifications; and further

VOTED: That the Authority hereby authorizes the Director to execute in the name and on behalf of the Authority, all documents deemed necessary, including an amendment to the Land Disposition Agreement and Deed with Dewey Square Tower Associates concerning the land located at Parcel C-5 in the South Station Urban Renewal Area, which contains the building known as One Financial Center, such documents to be in the Authority's usual form, including such changes as the Director deems appropriate and in the best interest of the Authority.

Retail/Cafe/Lounge

EXHIBIT A

SECOND FLOOR PLAN



